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BEFORE THE
Federal Communications Commission

WASHINGTON, D.C.

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Federal Communications Commission
Office of Secretary

In re Applications of

) MM Docket No. 93-75

TRINITY BROADCASTING OF
FLORIDA, INC.

) File No. BRCT-911001LY

For Renewal of License of Station WHFT(TV),
Channel 45, Miami, Florida

GLENDAL E BROADCASTING COMPANY

) File No. BPCT-911227KE

For Construction Permit for a New Commercial
TV Station on Channel 45 at Miami, Florida

DOCKET FILE COPY ORIGINAL

To: The Commission

**COMMENTS OF NATIONAL MINORITY T.V., INC.
IN SUPPORT OF MOTION TO VACATE THE RECORD ON
IMPROVIDENTLY DESIGNATED ISSUES**

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SUMMARY

Until the issuance of Judge Chachkin's Initial Decision, the Mass Media Bureau consistently maintained throughout the course of this lengthy hearing that Trinity did not deserve to lose the license for its Miami, Florida television station because neither Trinity nor NMTV intended to deceive the Commission. In February of this year -- in its very last pleading in the exceptions cycle before the now-defunct Review Board -- the Bureau did an about-face, suddenly advancing the position that Trinity and NMTV *did* intend to deceive the Commission because its "agents" Paul Crouch and Colby May not only possessed an "unreasonable" interpretation of the minority exception to the 12-station television multiple ownership rule, but *knew* that their interpretation was wrong.

This stunning reversal of position has led Trinity to file a motion to vacate the record on the issues against Trinity and NMTV in this case, which, as Trinity overwhelmingly shows, should never have been designated. NMTV fully and wholeheartedly supports Trinity's Motion. The Motion painstakingly examines the legislative and administrative history of the minority exception to the 12-station rule, and establishes beyond a shadow of a doubt that May and Crouch's interpretation of that exception, far from being unreasonable, was "exactly right." Moreover, Trinity's Motion contains first-hand evidence from a former Bureau supervising attorney -- with whom the Bureau apparently never attempted to consult before advocating Trinity's disqualification -- proving that (i) the Bureau *itself* interpreted the minority exception exactly as May and Crouch did; and (ii) Trinity and NMTV were entirely forthright and candid in their dealings with the Commission.

NMTV files these Comments to offer its separate perspective on the injustice it has suffered as a result of this proceeding. The Bureau's sudden reversal of position on the question of intent is unsupported by the facts of this case. This is evident from the Bureau's Consolidated Reply to Exceptions, which is replete with language illustrating that the Bureau's new position is based on inference, speculation, and quantum leaps to conclusions. Abundant evidence in the hearing record, as well as still more evidence that the Judge wrongly excluded from the record, shows that NMTV at all times acted in good faith and lacked any deceptive intent. As for the Bureau's new theory that Colby May and Paul Crouch *knowingly* misinterpreted the minority ownership exception, that theory is nothing short of mind-boggling in light of Trinity's proof that May and Crouch's interpretation was legally *correct*. Even if the Commission should today disagree with that interpretation despite the overwhelming legal analysis in Trinity's Motion, it is simply impossible to find that May and Crouch had deceptive intent in making that interpretation, or that Trinity or NMTV intended to deceive the Commission.

Aside from the merits of Trinity's Motion, NMTV also files these Comments to urge the Commission to immediately remove the regulatory paralysis that this proceeding has imposed upon it. The HDO in this case expressly allowed NMTV to continue to acquire and dispose of broadcast facilities pending final resolution of this proceeding. Yet the renewal application for NMTV's only full-power television station, NMTV's applications to buy and sell television translator stations, and another full-power television acquisition proposed by an entity in which NMTV's three minority Directors (but not Paul Crouch) are involved, have all been challenged by petitioners and overfilers eager to capitalize on the Judge's flawed decision in this case. Quite

simply, NMTV has been totally impeded from continuing its broadcast business by a proceeding in which none of its licenses are at stake, in which NMTV has been treated disparately from similarly situated licensees, in which NMTV has unfairly been branded as a mere extension of Trinity with no life of its own, and in which NMTV was not specifically found to have engaged in any misconduct. It is time for the Commission to remove this uncertainty by immediately ruling on NMTV's qualifications to be a broadcast licensee.

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To: The Commission

**COMMENTS OF NATIONAL MINORITY T.V., INC.
IN SUPPORT OF MOTION TO VACATE THE RECORD ON
IMPROVIDENTLY DESIGNATED ISSUES**

National Minority T.V., Inc., ("NMTV"), by its attorneys, hereby submits its Comments in support of the "Motion to Vacate the Record on Improvidently Designated Issues" ("Motion"), filed August 20, 1996 by Trinity Broadcasting of Florida, Inc. ("Trinity"). For the reasons set forth in Trinity's Motion and these Comments, a grievous injustice has occurred not only to Trinity, but to NMTV. That injustice must be remedied now.

I. Introduction

1. NMTV fully and uncategorically supports Trinity's Motion. That Motion, which painstakingly examines the legislative and administrative history of the "minority-controlled" exception to the then-existing 12-station television ownership limit, and points to evidence from

inside the Mass Media Bureau (the “Bureau”) itself establishing that the Bureau construed the exception precisely as Colby May did, establishes beyond any doubt that this proceeding was fundamentally ill-conceived from the start and should never have been designated.

2. NMTV submits these Comments mainly in order to emphasize the uniquely unfair posture in which it and its minority Directors have been placed by the present status of this proceeding. As NMTV pointed out in its January 23, 1996 Exceptions to the Initial Decision of Administrative Law Judge Joseph Chachkin (the “ID”), the Judge altogether excluded a wealth of evidence proving NMTV’s bona fide minority purpose, its bona fide fulfillment of that purpose, its bona fide control by minority directors who thought independently and were possessed of vast credentials in service to the minority community, and the absolute lack of any intent on the part of NMTV’s Directors to violate any Commission rule or policy. The result was an ID which painted a distorted and wrong picture of NMTV as a “sham” corporation -- an “alter ego” -- whose purpose, according to the Judge, was merely to carry out the desires of Trinity and Dr. Paul Crouch.

3. Judge Chachkin’s flawed ID has subsequently gained heretofore unprecedented support from the Bureau in the form of a Consolidated Reply to Exceptions filed on February 28, 1996, which, as Trinity cogently details in its Motion, represents no less than a 180-degree reversal of the Bureau’s original position on the critical issue of Trinity’s (and NMTV’s) intent. Having taken the position throughout its Findings and Reply Findings that the evidence did not support a finding that Trinity or NMTV intended to deceive the Commission, the Bureau has now come full circle to the conclusion that the weight of the evidence *establishes* such an intent -- a turnabout based on the entirely new and unsupportable theory that Dr. Crouch and Colby May not only held an unreasonable interpretation of the minority exception to the 12-station rule,

but *knew that their interpretation was unreasonable*. The Bureau's eleventh-hour about-face in position has led Trinity to submit a thoroughly documented presentation establishing that this proceeding should never have been designated in the first place, and, worse, that the Bureau apparently never consulted a member of its own staff who would have offered evidence proving Trinity's (and NMTV's) forthrightness.

4. Unfortunately, however, NMTV -- like Trinity -- has never had the opportunity to comment on the Bureau's reversal of position, which came in the final pleading in the cycle before the Review Board. On the very day that NMTV and other parties filed Exceptions with the Review Board -- January 23, 1996 -- the Commission announced its decision to eliminate the Review Board. That elimination became effective on April 24, 1996 -- after Reply Exceptions and requests for oral argument had been filed with that body.

5. The Review Board did not hold an oral argument or reach a decision in this proceeding. Instead, on May 3, 1996, it issued an Order, FCC 96R-15, certifying the case to the full Commission. Regrettably, although many months have passed, the Commission has not yet issued any order providing NMTV or the other parties with any guidance on how it intends to handle cases that have been certified by the Review Board, i.e., whether it intends to hold an oral argument or permit further briefing. Thus, NMTV, like Trinity, has had no opportunity to present oral argument or to respond to new material belatedly raised in the Reply Exceptions of the Mass Media Bureau, the Spanish American League Against Discrimination ("SALAD"), and the competing applicant for the Miami station, Glendale Broadcasting Company ("Glendale").^{1/} Likewise, NMTV, like Trinity, has been precluded from raising arguments that would normally

^{1/} A response to the Glendale and SALAD reply exceptions is beyond the scope of these Comments. NMTV reserves the right to respond to those pleadings at the appropriate time.

be raised in an Application for Review -- specifically arguments as to defects in the HDO. See Sections 1.115(e)(3) and Section 1.106(a)(1) of the Commission's Rules.

6. The upshot of the erroneous designation of this proceeding, the Judge's skewed view of the relevant evidence in the ensuing hearing, the distorted ID that resulted, the Bureau's sudden and unfounded new theory concerning the evidence in the case, and NMTV's inability thus far to respond to the new Bureau position, has been to place NMTV in an infinitely unfair state of regulatory limbo. NMTV has no license directly at stake in this proceeding. The ID did not even consider the conduct of NMTV individually, let alone find that NMTV *specifically* was guilty of culpable conduct. Not even the Bureau, in advancing its new-found theory of the case, recommended that NMTV be disqualified from holding a Commission license. Yet, because the Commission's subordinate bodies have thus far viewed NMTV -- wrongly -- as one and the same as Trinity, NMTV has been inflicted with the taint of this proceeding.

7. The result has been a paralysis of NMTV, and the mission of its minority Directors, by regulatory forces. NMTV has a pending license renewal application for its only full-power television station, KNMT(TV), Portland, Oregon. That application has been opportunistically overfiled by Maravillas Broadcasting Company, a party affiliated with Glendale Broadcasting Company ("Glendale"), the renewal challenger here. Indeed, the Glendale/Maravillas enterprise and/or minority organizations represented by the same counsel as SALAD have pounced on numerous applications by which NMTV and its minority Directors have sought to sell or acquire broadcast facilities, in every instance holding this proceeding over NMTV's head. Even an attempt by NMTV's minority Directors to establish a separate company, Mayville Communications, Inc., in which Dr. Crouch is not involved, has met with protests by Glendale/Maravillas and by a party represented by the same attorney as SALAD. Quite simply,

NMTV and its minority Directors have been precluded from pursuing their business and their mission by the pendency of a proceeding that has made no determination as to NMTV's licensee qualifications, but which casts a cloud on those qualifications by association. NMTV is entitled to have this uncertainty removed, and removed now.

8. Aside from making clear its support of Trinity's Motion, therefore, NMTV offers these Comments for several reasons. First, as set forth below, NMTV wishes to advance its own perspective on the belated change in position taken by the Bureau in this case. Not only is the Bureau's Consolidated Reply to Exceptions ("Consolidated Reply") procedurally impermissible and prejudicial to both NMTV and Trinity, but the Bureau's arguments in that Consolidated Reply are unfounded with respect to its new theory of intent. Second, NMTV observes that the overwhelmingly thorough arguments in Trinity's Motion, while clearly establishing that this proceeding was erroneously designated, at a minimum completely negate the Bureau's newly advanced theory that Trinity and NMTV had an intent to deceive the Commission. Finally, NMTV offers its perspective on the immensely unfair effect that this proceeding has had on it, and urges the Commission to remove the regulatory uncertainty that for years has paralyzed NMTV and its minority Directors from expanding their broadcast mission of spiritual and public service, particularly to minorities, in the areas NMTV serves.

II. Discussion

A. There Is No Evidentiary or Legal Support For the Bureau's Reply to Exceptions

9. In its Proposed Findings of Fact and Conclusions of Law in this proceeding, filed August 15, 1994, the Bureau concluded that "the evidence does not support a conclusion that Crouch, TBN or NMTV intended to deceive the Commission." See Mass Media Bureau's

Proposed Findings of Fact and Conclusions of Law ("MMB F&C"), at 159. Accordingly, the Bureau further concluded that denial of Trinity's Miami license application was not warranted.

Id. As the Bureau pointed out, "Crouch and TBN are now in compliance with the multiple ownership rules, and there is no reason to believe that denial of Trinity's application is necessary to ensure the future reliability of Crouch and TBN or the truthfulness of their submissions. See [Policy Regarding Character Qualifications in Broadcast Licensing, 102 F.C.C.2d 1179, 1228 (1986) ("Character Policy Statement").]"

10. In its Reply Findings of Fact and Conclusions of Law ("MMB Reply F&C"), filed October 7, 1994, the Bureau affirmed the position taken in its Findings. Specifically, the Bureau stated:

. . . [T]he evidence does not support a conclusion that these failures to acknowledge NMTV's dependence on TBN resulted from an intent to deceive the Commission.

MMB Reply F&C at 5 (emphasis added).

The Bureau agrees with Trinity that NMTV's failure to disclose the nature and extent of its relationship in its applications, when considered with contemporaneous disclosures in other submissions to the Commission, indicates that NMTV's omission did not occur because of an intent to deceive the Commission.

Id. at 21-22 (emphasis added). Thus, up until the release of the ID, the Bureau systematically and consistently maintained the position that the record did not reflect any intent to deceive the Commission.

11. After the ID was released, the Bureau filed Limited Exceptions on January 23, 1996. The only reference to the de facto control and abuse of process issues in the Bureau's Limited Exceptions is the following statement:

The ID's denial of Trinity's renewal application was supported by substantial record evidence, and, consequently, the ID should be affirmed insofar as Trinity is concerned.^{2/}

The Bureau's Limited Exceptions focused entirely on the Judge's erroneous resolution of the misrepresentation/lack of candor issue against Glendale. There was no mention of NMTV or any of its principals in the Bureau's Limited Exceptions.

12. In its Consolidated Reply, filed February 28, 1996, the Bureau advanced an entirely new argument, reflecting a major change in its position. According to the Consolidated Reply:

. . . [T]he Bureau has determined upon further review of the evidence that TBN/NMTV, through their agents, Crouch and Colby May ("May"), attorney for TBN and NMTV, intentionally deceived the Commission by claiming that NMTV was a minority-controlled corporation within the meaning of Section 73.3555 of the Commission's Rules and by failing to disclose the nature and extent of NMTV's relationship with TBN in NMTV's applications to acquire full power television stations in Odessa, Texas; Portland, Oregon; and Wilmington, Delaware.

Consolidated Reply at 4.

13. There is no question that this is a radical change in the Bureau's position advanced for the first time in reply exceptions. The Bureau's abrupt change in position is unsustainable, both from a procedural and substantive standpoint. If, after release of the ID, the Bureau desired to change its theory of the case by suddenly positing the theory that Colby May, and therefore Dr. Crouch, knew their interpretation of the minority exception was wrong, it was incumbent upon the Bureau to advance the argument in exceptions to the ID. There is well-established Commission case precedent holding that parties waive their rights to make new

^{2/} As TBN has already demonstrated in its Reply to Exceptions (at 2-3), filed February 28, 1996, the Mass Media Bureau applied the wrong standard of review in analyzing the ID.

arguments if they fail to timely except to an initial decision. See United Broadcasting Co. of Florida, Inc., 38 R.R.2d 225 (1976); KFBW Broadcasting, Inc., 28 R.R.2d 1644 (Rev. Bd. 1973) (after raising no objection to the failure of the Presiding Judge to find that an applicant had testified falsely, Bureau was held to have waived its right to later raise the question).

14. Moreover, neither the facts, logic nor Commission case precedent support the conclusion reached by the Bureau. First, the Bureau provides no explanation whatsoever for its change from its earlier position in Reply Findings that the “contemporaneous disclosures in other submissions to the Commission, indicate that NMTV’s omission did not occur because of an intent to deceive the Commission.” The Bureau’s new theory in its Consolidated Reply is based not on hard record evidence, but on the lamest of conjecture -- conjecture so weak that the Bureau can bring itself to say no more than “it is fair to infer,” “it is reasonable to conclude,” “the more likely explanation is,” “it therefore seems implausible,” “presumably” and “it can reasonably be inferred.” Consolidated Reply at 8, 9, 10, 15, 16. The Commission has consistently refused to make adverse findings against a party based on inference and speculation. Kennelwood Broadcasting Company, Inc., 6 FCC Rcd 1350, 1352 (Rev. Bd. 1991); Scott & Davis Enterprises, Inc., 50 R.R.2d 1251, 1258 (Rev. Bd. 1982). To take away Trinity’s Miami license on that basis would be a travesty.

15. Equally important, the Bureau continues to agree that “the evidence does not support a conclusion that NMTV abused the Commission’s processes with respect to its low power television applications.” Consolidated Reply at 2. The Bureau states that “[t]he Commission’s low power rule making proceedings and its public notice and accompanying instructions for claiming preferences indicated that mere ownership of more than 50% of a low power television applicant was sufficient to support a minority preference claim,” citing Low

Power Television Broadcasting, 82 F.C.C.2d 47, 75 (1980) and Random Selection Lotteries, 93 F.C.C.2d 952, 976-77 (1983). Thus, the Bureau has conceded that Colby May's advice to TBN with respect to the issue of whether NMTV was minority-controlled for purposes of the minority preference in LPTV lotteries was correct and that TBN and NMTV justifiably relied on that advice.^{3/}

16. Moreover, the Bureau goes on to concede that the Commission did not "clarify" that both de jure and de facto control of a low power applicant by members of minority groups was necessary before a minority preference could be claimed until the Commission released its Hearing Designation Order, ("HDO"), 8 FCC Rcd 2475, 2480 (M.M.Bur. 1993). The Bureau has recognized throughout this proceeding that paragraph 38 of the HDO states a policy of determining entitlement to the minority preference that is at odds with Random Selection Lotteries, supra, which held that only ownership is taken into account when determining whether a minority preference is warranted in an LPTV lottery. Indeed, the Bureau states that "prior to the release of the HDO, TBN and Crouch could not have had and did not have the intent necessary to abuse the Commission's processes with respect to NMTV's low power television and television translator filings." Consolidated Reply at 3.

17. There is no evidence at all that NMTV was aware that Colby May's advice should be treated differently with respect to full power stations than it was with respect to low power

^{3/} In addition to the fact that NMTV's interpretation of the LPTV rule was consistent with the rule itself and the Commission's application forms, it was also consistent with factual information distributed to the public by the Commission. In October 1984, the Commission distributed a Low Power Television (LPTV) Fact Sheet at its Second Annual Women in Telecommunications Conference. A copy of that Fact Sheet is appended hereto as Attachment A. The information contained in the Fact Sheet as to "who qualifies for the minority ownership preference" is entirely consistent with NMTV's interpretation. Significantly, there is no mention of de facto control or Note 1 to the multiple ownership rules.

stations. Nor is there any evidence that Colby May understood the distinction which the Bureau now attempts to make or that Colby May, Trinity or NMTV knew that their interpretation was wrong, let alone that there had been "intentional deceit." The Commission's definition of "minority-controlled" for purposes of the full power television minority ownership exception was precisely the same as the definition for purposes of the low power television minority preference. This is definitively demonstrated in Trinity's Motion, which includes (i) the videotape of the Commission's December 19, 1984 open agenda meeting adopting the minority ownership exception to the multiple ownership rules, (ii) a thorough analysis of the legislative history and Commission case precedent surrounding the adoption of the minority exception, and (iii) a Declaration by former Bureau supervising attorney Alan Glasser, which shows that the Video Services Division in fact applied correct policy in processing NMTV's Odessa, Texas application.

18. In an effort to show that the Commission's policies for determining ownership and control of full power television stations by minorities differ from the policies for low power television lotteries, the Bureau cites Anax Broadcasting, Inc., 87 F.C.C.2d 483 (1981), and Southwest Texas Public Broadcasting Council, 85 F.C.C.2d 713 (1981). However, these cases fail to support the Bureau's argument. Anax dealt with the question of whether an Administrative Law Judge erred in a comparative broadcast case when he rejected a post-designation amendment by a limited partnership. The Commission held that the amendment, which increased the general partner's interest from 28% to 99%, did not constitute a transfer of a controlling partnership interest. The case is not even remotely similar to the situation faced by NMTV. Nor does Southwest Texas Public Broadcasting Council, *supra*, advance the Bureau's position. In Southwest, the Commission acknowledged that in its capacity as managing agent,

the University of Texas “exercised a substantial degree of day-to-day operational control” over noncommercial educational television stations that were licensed to the Council. Southwest, 855 F.C.C.2d at 715. The Commission stated that “[p]rovided it did not surrender control of the stations’ basic policies, we therefore see no reason why Council should not have accepted free use of University’s broadcast facilities and personnel, in return for which it provided many of University’s students with hands-on broadcast training.” Id. at 716. Despite the exercise of day-to-day control by one broadcaster over another in Southwest, the arrangement was found to be permissible and the licensee was not disqualified. Thus, the case actually supports the positions of Trinity and NMTV. Simply stated, Anax and Southwest fail to support the proposition that Trinity or NMTV consciously “crossed the line” dividing permissible from impermissible behavior when NMTV sought full-power television stations under the minority exception, even assuming arguendo that the “line” was clear.^{4/}

19. Nor do the other cases cited by the Bureau support its newly advanced argument. In Turner Broadcasting System, Inc., 101 F.C.C.2d 843 (1985), the Commission denied a request for a declaratory ruling as to whether certain actions taken or contemplated by CBS Inc. constituted a transfer of control requiring prior FCC approval. The Commission found that if the Board of Directors acted within its authority, then it merely exercised the authority granted to it by the corporation’s by-laws, charter and shareholders. “Intervention in such matters would involve us in a morass of corporate financing decisions and other corporate matters where the burden from our intrusion would be far outweighed by any conceivable public interest benefit.”

^{4/} Arnold L. Chase, 5 FCC Rcd 1642 (1990), also cited by the Bureau, does not support the Bureau’s argument here. Chase involved an issue as to whether a for-profit corporation’s financial position was deliberately crippled to manufacture a failing company situation in order to justify a request for an exception to the one-to-a-market rule. The licensee was exonerated.

Id. at 850. KOED, Inc., also cited by the Bureau, is entirely inapposite. The licensee in KOED actively tried to deceive the Commission by deliberately misrepresenting the reasons why it had taken the station off the air.

20. Finally, the most amazing aspect of the Bureau's lack of consistency is its invocation of the Character Policy Statement, supra, to support its argument that the Commission must deter future misconduct. As noted above, the Bureau's Proposed Findings specifically found that Crouch, TBN and NMTV are now in compliance with the multiple ownership rules^{5/} and "there is no reason to believe that denial of Trinity's application is necessary to ensure [their] future reliability," citing the very same Character Policy Statement.

21. In sum, the Bureau's new position in reply exceptions that Trinity and NMTV intended to deceive the Commission is procedurally impermissible, devoid of any record support, inconsistent with the Bureau's consistent (and correct) position that Trinity and NMTV through their counsel interpreted the minority preference in LPTV lotteries correctly, and unsupported by the case precedent the Bureau cites. The Bureau's arguments cannot be credited, either as a matter of fact or of law.

^{5/} In its Proposed Findings (at p. 154), the Bureau conceded that any violation of the multiple ownership rules by Trinity or NMTV occurred during the period between February 1987 and March 1991 when NMTV filed applications for Odessa, Texas, Portland, Oregon and Wilmington, Delaware (the Wilmington application was ultimately dismissed before grant and never ripened into an actual broadcast interest). The Bureau concluded in its Findings that "Crouch and TBN are now in compliance with the multiple ownership rules." MMB F&C at 159. Nothing has occurred since the filing of the Bureau's Findings to change that conclusion. Ironically, pursuant to the Telecommunications Act of 1996, the Commission has now eliminated all numerical limitations on the number of television stations a person or entity may own.

**B. Trinity's Motion Further Supports the Fact
That NMTV Has Acted in Good Faith and Without
Any Intent to Deceive the Commission**

22. It is well established that even where there has been an unauthorized transfer of control, denial or revocation of a license is not warranted "unless it is concealed through misrepresentation or other deception." Silver Star Communications - Albany, Inc., 6 FCC Rcd 6905, 6907 (1991). In order to disqualify an applicant under an abuse of process issue, there must be findings of deceptive or abusive intent which would sustain a conclusion that there was disqualifying misconduct. Evansville Skywave, Inc., 7 FCC Rcd 1699, 1701 (1992); RKO General, Inc., 4 FCC Rcd 4072, 4073 (1989). As noted previously, the Mass Media Bureau clearly concluded in its Proposed Findings and Conclusions that "the evidence does not support a conclusion that Crouch, TBN or NMTV intended to deceive the Commission." MMB F&C at 159. The only rationale that the Bureau has advanced in its belated support of the ID in Reply Exceptions consists of a series of unwarranted assumptions and inferences and sheer speculation.

23. Trinity's Motion carefully and thoroughly describes the political dynamics and the legislative and administrative history that led to both the LPTV minority preference and the adoption of the minority exception to the 12-station rule. The Motion establishes beyond a shadow of doubt that these two exceptions had an identical purpose, and, more importantly, were identical in defining "minority-controlled" without reference to de facto control. Even the Bureau agrees that Trinity and NMTV interpreted the LPTV minority preference correctly. The language adopted by the Commission in its minority ownership exception -- i.e., that "minority controlled" means more than 50 percent owned by one or more members of a minority group -- is identical to the language used for the low power television minority preference. The video tape of the Commission's December 1984 meeting adopting the minority exception clearly

reflects that the Commission understood that the definition of “minority controlled” for the minority exception was identical to the definition for purposes of the low power preference. Moreover, the Minority Incentive Reexamination, 50 Fed. Reg. 27629 (July 5, 1985), ratified that the minority ownership exception was an ownership per se policy identical to the LPTV preference. Finally, an ownership per se policy is consistent with the manner in which the Commission has historically treated non-profit/non-stock corporations where the owners are the corporation’s directors. See, e.g., Roanoke Christian Broadcasting, Inc., 52 R.R.2d 1725 (Rev. Bd. 1983), rev. denied, FCC 83-441 (1983).

24. The Motion therefore proves that this case should never have been designated for hearing. At a minimum, however, the information contained in the Motion absolutely negates any finding that Trinity or NMTV intended to deceive the Commission -- and destroys the Bureau’s new theory that Colby May and Paul Crouch *knew* that their interpretation of the minority exception to the 12-station rule was wrong. Colby May’s advice was clearly reasonable and there is no evidence to suggest otherwise. This is particularly true because, when it adopted the minority exception to the multiple ownership rule, the Commission did not provide any specific guidance to broadcasters. There was no explanation concerning the levels or kinds of assistance that non-minorities could provide under the minority exception to the multiple ownership rules. The Commission never indicated that the exception should be interpreted differently than the LPTV rule. Significantly, the Commission has repeatedly stated that arrangements such as permitting investors to provide “programming or other services” have been central to the advancement of minority ownership of broadcast facilities. See, e.g., Review of the Commission’s Regulations Governing Attribution of Broadcast Interests, 10 FCC Rcd 3606, 3640 (1995).

25. As NMTV demonstrated in its Exceptions, this is not a case involving a de jure transfer of control, but rather is one alleging de facto control under a newly adopted exception to a rule, nebulous policies, and circumstances differing from all relevant precedent. As Trinity cogently demonstrates, irrespective of how one interprets the minority ownership exception to the multiple ownership rules, NMTV had FCC approval for Paul Crouch, a non-minority, to act as its President and one of its Directors. Moreover, the Commission was explicitly apprised by NMTV of Dr. Crouch's responsibilities as President of the company. NMTV's By-Laws, which were provided to the Commission, specifically gave Dr. Crouch authority as President to "generally supervise, direct, and control the business and officers of the corporation" and gave him "the power to select and remove all agents and employees of the corporation." (TBF Ex. 101, Tab I, p. 14). Paul Crouch's interest as President and a Director of NMTV -- a non-stock, non-profit corporation -- was clearly a cognizable interest as established by case precedent. To the extent that Commission case precedent deals with non-stock corporations, the Commission has itself conceded that it "has never set forth the circumstances that would constitute a transfer of control . . . with regard to non-stock corporate licensees." Seven Locks Broadcasting Co., 94 F.C.C.2d 899, 901-02 (1983); Pacifica Foundation, 41 F.C.C.2d 71 (Rev. Bd. 1973). Even though the Commission commenced an inquiry in 1989 to delve into how to handle transfer of control issues involving non-stock corporations, it never completed the inquiry or issued any guidance with respect thereto! See Notice of Inquiry, Transfers of Control of Certain Licensed Non-Stock Entities, 4 FCC Rcd 3403 (1989). Given all these unsettled areas of law, it is simply impossible to fathom the notion that Crouch and May knowingly misinterpreted that law -- especially where, as Trinity has shown, their interpretation was (in Chairman Fowler's words) "exactly right."

26. Moreover, as shown in NMTV's Exceptions, the Judge excluded relevant evidence bearing on the state of mind of NMTV's principals and their lack of any deceptive intent. He ignored other evidence that demonstrated their good faith, relying instead on erroneous preconceived notions. See, e.g., NMTV's Consolidated Brief and Exceptions, filed January 23, 1996.^{6/} Moreover, the Judge excluded abundant evidence that NMTV's directors, past and present, are leaders in their communities with impressive credentials who were not and would not be "pawns" of Dr. Crouch and Trinity.^{7/}

27. Not only did the Judge exclude relevant evidence such as that above; he also ignored oral testimony of NMTV's principals that showed their good faith and lack of intent to deceive. For instance, Jane Duff stated during cross-examination:

Q. Why was Translator TV, Inc. formed?

A. As a result of the Commission's rules that said that there would be opportunities for minorities, and Mr. Crouch at that time had understood that the FCC was encouraging broadcasters to give opportunities to minorities, and at that time I think women were also being considered as -- you know, to get preferential treatment. So, the idea was to give opportunities for minorities to file and to have ownership. . . .

Q. Well, I'm, I'm trying to understand this. Was it your understanding that the Commission wanted to encourage

^{6/} In the ID, the Judge summarily referred to "TBN/NMTV," dismissing NMTV as a "sham." Although the Judge never found NMTV to harbor any illicit motive, his unfair and unwarranted remarks make it abundantly clear why the Commission has stated: "we believe that, in view of the ambiguity and potential for confusion connected with the word 'sham,' its use should be avoided. . . . [W]e see no particular benefit to be gained from use of the word 'sham' in conjunction with the analysis of basic qualifying issues concerning the more fundamental concepts of misrepresentation, lack of candor, or abuse of process." Evansville Skywave, Inc., 7 FCC Rcd 1699 (1992).

^{7/} See, e.g., TBF Ex. 101, paras. 19, 76, 86, 96; TBF Ex. 102, paras. 5, 30, 33; TBF Ex. 103, paras. 3, 11(c-e), 12; TBF Ex. 106, paras. 2, 3, 26.

minorities to become involved in translator stations or was it your understanding that the Commission wanted to encourage minorities to become involved in low-power stations?

A. In, in broadcasting.

Q. Broadcasting generally?

A. Right. In broadcasting generally.

Q. Why, why was a new company formed? Why didn't TBN merely hire more minorities to fulfill the Commission's in -- wishes?

A. TBN did hire minorities, but there's a difference between employees and people that had opportunities for, you know, for real ownership, and I think that's -- that was the concept that we were, we were looking at, and that's why I was so interested in the, in the idea myself. (Tr. 1570-71).

Ms. Duff's understanding of the Commission's minority ownership objectives was correct. In fact, in the series of seminars it held for minorities and females in the 1980's, the Commission fostered this understanding.

28. Reverend Hill's understanding of the Commission's minority ownership policies was similar to that of Ms. Duff. He testified:

Sir, all through the 60's and 70's to make a breakthrough and to get into what many people have called the main stream, governmental agencies including FCC have looked with favor with minor -- with majority-owned businesses assisting minorities to become a part of televisions, businesses or anything that could help them economically come into being and they have looked with favor to the extent that most governmental agencies have had special provisions for companies, majority companies who would assist minorities companies in to coming into being and getting on their feet.

(Tr. 2007).

Amazingly, the Judge then remarked that “well, all I can tell you, sir, is that I don’t know of any requirement the FCC [sic] that you help minority business, this is a broadcast station and broadcasting has nothing to do with helping minority businesses.” (Tr. 2011).

29. The reliance of NMTV’s principals on the advice they received from Colby May is also evident. With respect to NMTV’s LPTV/translator applications, Ms. Duff testified:

Translator TV, Inc. [the original name of NMTV], which the FCC had announced that we had this -- we had a, a choice of being able to, apply for the preference. And I talked to Colby May regarding this, and just to refresh our memories and, you know, just to make sure that we had -- he advised us that we were qualified. And I talked to Dr. Crouch and [then-NMTV Director David Espinoza], and of course we all agreed that this is something that we were entitled to and that we should go for the preference.

Q. And, and that’s your basis for having claimed a minority preference in these Certifications?

A. Yes.

(Tr. 1640).

30. With respect to the acquisition of a full power station by NMTV, Ms. Duff testified:

. . . [A]t that particular time, Trinity had the full complement of stations that the FCC would allow. And I was just made aware not too long before that the Commission had changed its ownership rules. And, so, I called Colby May to find out if there were a possibility that NMTV, at that time it was still Translator, could own a full-powered station since we had minority control and he told me that it was true, that the rules did allow us to have a station if minorities were in the majority of the Board. And I talked to David Espinoza about it and the Board concurred that we would make the offer to buy this station, and we did so and filed that application.

(Tr. 1688-89; see also Tr. 1694).

The information in Trinity's Motion, as well as evidence in the record and evidence that the Judge excluded from the record, all completely undermine a finding that NMTV possessed intent to deceive the Commission.

**C. This Proceeding Has Affected NMTV
in a Uniquely Unfair Manner**

31. As Trinity's Motion shows, NMTV has become entangled in a proceeding that never should have been designated in the first place. As NMTV has shown in its Exceptions, NMTV has suffered through a prolonged hearing in which practically all the evidence it presented concerning its bona fides as a minority corporation and the good faith of its principals was ignored or excluded from the record altogether. That treatment resulted in an ID which skews reality, painting NMTV with the same tarred brush as Trinity.

32. Now, subsequent to the ID, NMTV has once again been smeared with the Bureau's sudden about-face on the question of Trinity's and NMTV's intent -- an about-face that rests on conclusory words and phrases such as "it is reasonable to infer," "it thus appears," and "presumably." Consolidated Reply, pp. 15-16. Moreover, Trinity has now developed compelling evidence in the form of Alan Glasser's declaration that, in taking its startling reversal of position, the Bureau never bothered to question the FCC employee who dealt with the NMTV applications in question. Mr. Glasser was uniquely within the Bureau's control throughout the proceeding. If the Bureau had any questions concerning Colby May's un rebutted testimony as to his conversations with Mr. Glasser, the Bureau could easily have consulted with Mr. Glasser. It was fundamentally unfair of the Bureau to draw inferences in Reply Exceptions (see Consolidated Reply at 15) as to what Colby May discussed with Mr. Glasser or understood based

on those discussions. Mr. Glasser's Declaration, attached to Trinity's Motion, demonstrates that there was no intent on the part of Trinity, NMTV or Colby May to deceive the Commission.

33. Moreover, as set forth in Trinity's Motion, the Commission's treatment of NMTV and Trinity cannot be reconciled with the Commission precedent found in the cases of Roy M. Speer, 2 C.R. 887 and 3 C.R. 363 (1996) and Fox Television Stations Inc., 10 FCC Rcd 8452 (1995), condition removed, 78 R.R.2d 1294 (1995). Similarities between these cases and the one at hand abound, yet TBN and NMTV have been treated harshly by comparison.

34. In Speer and Fox, the Commission resolved complex allegations concerning de facto control, abuse of process and alien ownership without holding evidentiary hearings. Trinity's Motion presented a compelling analysis of the treatment afforded Trinity and NMTV in this case in comparison to Fox and Speer. There are additional points that are also noteworthy.

35. In this case, NMTV was faulted for airing TBN programming. See e.g., ID, para. 320. Yet in Speer, the Commission stated, "there is no Commission rule or policy that prohibits a broadcaster from contracting to air approximately 141 hours per week, or even more, of a network's programming, as Urban has agreed to do," 3 C.R. at 378, and concluded that programming control had not shifted to the Home Shopping Network.

36. In both Speer and Fox, the violations were extremely serious in nature and extended over a lengthy period of time. The Commission found that Fox had violated the alien ownership benchmark restrictions for nearly a decade. Fox Television Stations, Inc., supra, 10 FCC Rcd at 8492. In Speer, the Commission found that Silver King violated the television duopoly rule because the Grade B contour of Station WTMW(TV), Arlington, Virginia substantially overlapped that of Station WHSW-TV, Baltimore, Maryland, which Silver King also controlled. The television duopoly rule has existed far longer than the minority exception to